

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>KEVIN MAURICE SMITH,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>1:05CV00498</b>
<b>v.</b>	)	<b>1:98CR369-1</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	

**O-R-D-E-R**

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 3, 2005, was served on the parties in this action. Petitioner objected to the Recommendation. The Court has also considered Petitioner's "Supplement," Pleading No. 5.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

**IT IS THEREFORE ORDERED** that Petitioner's motion for reconsideration pursuant to Fed. R. Civ. P. 60(b) [Pleading No. 1] be construed as an attempt by Petitioner to file a second or successive § 2255 motion and that this action be dismissed due to Petitioner's failure to obtain certification from the Fourth Circuit as required by 28 U.S.C.

§§ 2244 and 2255 and Fourth Circuit Local Rule 22(d). A judgment dismissing this action will be entered contemporaneously with this Order.

This the day of November 7, 2005

/s/ N. Carlton Tilley, Jr.  
United States District Judge